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10/564,043	06/30/2006	Patrick Pichat	P/3425-34	5755

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NEW YORK, NY 100368403

EXAMINER

BASHAW, HEIDI M

ART UNIT	PAPER NUMBER
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4138

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,043

Applicant(s)

PICHAT ET AL.

Examiner

Heidi M. Bashaw

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 4-9 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10-13 and 17-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species 4 and D in the reply filed on October 1, 2007 is acknowledged. The traversal is on the ground(s) that the examiner did not give grounds for election of species. This is not found persuasive because the special technical feature of this 371 national stage application is found in the prior art, which makes the special technical feature a common technical feature. The applicant has not specifically made it of record that each species is not patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

1. Claim 12 is objected to because of the following informalities: In line 2 on the claim it is believed that "each of the radial planes of the tube at least three" is in error for -- each of the radial planes of the tube has at least three --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 10-13 and 17-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 2-3 of claim 1, the

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applicant recites "a discharge nozzle for discharging a mixture of air and a dental powder suitable for cleaning piece." It is unclear what the applicant is trying to claim by the use of "piece" in the claim.

4. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2 of the claim the applicant recites "and/or," it is unclear what combination of limitations the applicant is trying to claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabile 4,676,749.

7. Re claim 1, Sierro teaches a nozzle piece 2 for a dental powder jet apparatus adapted for an exchangeable assembly on a hand piece (col. 2, ll. 60-32) for discharging a mixture of air and a dental powder (col. 3, ll. 6-9) as well as a discharge nozzle 7 for a fluid (col. 3, ll. 15-16). The front partial length is formed as a tube and is provided with nozzle openings in the lateral area of the front end of the tube (col. 3, ll. 21-22). The mouth of the discharge nozzle for the fluid is axially displaced backwards with respect to the discharge for the air-powder mixture as illustrated in fig. 2.

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8. Siervo does not specifically teach the nozzle openings for the air-powder-mixture and the discharge nozzle for the fluid have dimensions and are disposed such that an eddy or vortex formation is promoted.

9. Mabile teaches the nozzle openings for the air-powder-mixture and the discharge nozzle for the fluid having dimensions and disposed to promote a vortex formation (col. 4, ll. 53-57).

10. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Siervo in view of Mabile in order to take advantage of the properties created by vortex formation as taught by Mabile (col. 4, ll. 57-68, col. 5, ll. 1-8).

11. Re claim 20, Siervo teaches the fluid discharge nozzle is concentrically arranged to the discharge nozzle for the air-powder mixture as illustrated in fig. 2.

12. Re claim 25, Siervo teaches the tube-shaped front partial length of the nozzle piece is made of plastic (col. 2, ll. 63-64).

13. Claims 2 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siervo et al. 6,837,709 (Siervo) in view of Mabile 4,676,749 further in view of Malmin 4,276,880.

14. Re claim 2, Siervo in view of Mabile does not teach the nozzle openings arranged in a common radial plane on the tube and spaced in regular or varying distances along the corresponding circumference of the tube.

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15. Malmin teaches the nozzle openings arranged in a common radial plane on the tube and spaced in regular distances along the corresponding circumference of the tube as illustrated in figs. 6-7 (col. 6, ll. 1-4).

16. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Malmin in order to more effectively scrub and remove dentinal debris as taught by Malmin (col. 4, ll. 31-37).

17. Re claim 10, Sierro in view of Mabile does not teach the nozzle openings are elongated.

18. Malmin teaches the nozzle openings are elongated as illustrated in figs. 6-7.

19. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Malmin in order to more effectively scrub and remove dentinal debris as taught by Malmin (col. 4, ll. 31-37).

20. Re claim 11, Sierro in view of Mabile does not teach the longitudinal axis of the slot-shaped nozzle openings parallel to the main axis of the tube.

21. Malmin teaches the longitudinal axis of the slot-shaped nozzle openings being parallel to the main axis of the tube as illustrated in fig. 6.

22. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Malmin in order to more effectively scrub and remove dentinal debris as taught by Malmin (col. 4, ll. 31-37).

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23. Re claim 12, Sierro in view of Mabile does not teach in one radial plane of the tube has at least three nozzle openings disposed along the corresponding circumference of the tube.

24. Malmin teaches two nozzle openings in one radial plane disposed along the corresponding circumference of the tube as illustrated in figs. 6-7 (col. 6, ll. 1-4). Sierro in view of Mabile further in view of Malmin does not teach three nozzle openings disposed in a radial plane along the corresponding circumference of the tube. However, it has been held that that mere duplication of parts has no patentable significance unless a new and unexpected result is produced (*In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) MPEP 2144.04 VI. B.).

25. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Malmin in order to more effectively scrub and remove dentinal debris as taught by Malmin (col. 4, ll. 31-37).

26. Claims 3, 13, 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabile 4,676,749 further in view of Maita et al. 4,993,941 (Maita).

27. Re claim 3, Sierro in view of Mabile does not teach the nozzle opening arranged in at least two different radial planes of the tube and the nozzle openings in one radial plane are twisted with respect to the nozzle openings in the other radial plane in the circumferential direction of the tube.

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28. Maita teaches the nozzle opening arranged in at least two different radial planes of the tube and the nozzle openings in one radial plane are twisted with respect to the nozzle openings in the other radial plane in the circumferential direction of the tube as illustrated in fig. 1.

29. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Maita in order to dispense the cleaning solution in diverse directions as taught by Maita (col. 2, ll. 40-44).

30. Re claim 13, Sierro in view of Mabile does not teach the front end of the tube is closed.

31. Maita teaches, as illustrated in fig. 1, the front end of the tube is closed.

32. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Maita in order to dispense the cleaning solution in diverse directions as taught by Maita (col. 2, ll. 40-44).

33. Re claim 17, Sierro teaches the nozzle opening is asymmetrically formed as illustrated in fig. 2.

34. Re claim 23, Sierro in view of Mabile does not teach the tube-shaped front partial length of the nozzle piece having an arched shape ending at the nozzle openings of the discharge nozzle.

35. Maita teaches the tube-shaped front partial length of the nozzle piece having an arched shape ending at the nozzle openings of the discharge nozzle as illustrated in fig. 2.

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36. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Maita in order to adapt the nozzle to the area being cleaned as taught by Maita (col. 2, ll. 52-53).

37. Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabile 4,676,749 in view of Maita et al. 4,993,941 (Maita) further in view of Wiek et al. 2005/0175960 (Wiek).

38. Re claim 18, Sierro in view of Mabile in view of Maita does not teach a deflection body provided at the axial nozzle opening.

39. Wiek teaches a deflection body 25 provided at the axial nozzle opening as illustrated in fig. 2.

40. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile in view of Maita further in view of Wiek in order to protect surrounding areas as taught by Wiek (par. 15).

41. Re claim 19, Sierro in view of Mabile in view of Maita does not teach the deflection body interchangeably mounted on the tube.

42. Wiek teaches the deflection body interchangeably mounted on the tube (par. 49).

43. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile in view of Maita further in view of Wiek in order to protect surrounding areas as taught by Wiek (par. 15).

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44. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabilie 4,676,749 further in view of Wiek et al. 2005/0175960 (Wiek).

45. Re claim 21, Sierro in view of Mabilie does not teach the fluid discharge nozzle provided with a diffuser shaped outlet cross section.

46. Wiek teaches the fluid discharge nozzle provided with a diffuser shaped outlet cross section 11 as illustrated in fig.1.

47. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabilie further in view of Wiek in order to adapt the nozzle to the treatment sight as taught by Wiek (par. 15).

48. Re claim 22, Sierro in view of Mabilie does not teach the fluid discharge nozzle disposed on one side of the discharge nozzle for the air-powder-mixture.

49. Wiek teaches the fluid discharge nozzle disposed on one side of the discharge nozzle for the air-powder-mixture (par. 46) as illustrated in fig. 2.

50. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabilie further in view of Wiek in order to have the two nozzles converge and form a mixture as taught by Wiek (par. 47).

51. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabilie 4,676,749 further in view of Heil 4,340,366.

52. Re claim 24, Sierro in view of Mabilie does not teach the nozzle piece having an oval cross section.

53. Heil teaches the nozzle piece having an oval cross section (col. 1, ll. 60-64).

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54. It would have been obvious to one having ordinary skill in the art to modify Sierro in view of Mabile further in view of Heil in order to insure proper air/water intermixing as taught by Heil (col. 1, ll. 49-50).

55. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabile 4,676,749 further in view of Linder 5,188,617.

56. Re claim 26, Sierro in view of Mabile does not teach a scale provided on the tube shaped front partial length of the nozzle piece.

57. Linder teaches a scale 19 on the tube shaped front partial length 17 of the nozzle piece 4.

58. It would have been obvious to one having ordinary skill in the art to modify Sierro in view of Mabile further in view of Linder in order to measure a distance as taught by Linder (col. 3, l. 42).

59. Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sierro et al. 6,837,709 (Sierro) in view of Mabile 4,676,749 further in view of Bruns et al. 5,765,759 (Bruns).

60. Re claim 27, Sierro in view of Mabile does not teach the tube is composed of a single use product exchangeably mounted on the grip.

61. Burns teaches the tube 7 is composed of a single use product exchangeably mounted in the grip as illustrated in fig. 3.

62. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierro in view of Mabile further in view of Burns in allow for easy

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removal of the tube in the event the tube becomes clogged, damaged or worn as taught by Burns (col. 2, ll. 28-29).

63. Re claim 28, Sierrro in view of Mabilie does not teach the tube is held by a holding piece, which is rotatable relative to the grip.

64. Burns teaches the tube 7 is held by a holding piece 11, which is rotatable relative to the grip.

65. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Sierrro in view of Mabilie further in view of Burns in allow for easy removal of the tube in the event the tube becomes clogged, damaged or worn as taught by Burns (col. 2, ll. 28-29).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi M. Bashaw whose telephone number is 571-270-3081. The examiner can normally be reached on Mon-Fri (Alternate Fridays off) 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Widi Barnau
HMB

10.11.2007

Kim Smith
KIMBERLY S. SMITH
PRIMARY EXAMINER

10/12/07